

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA                  )  
    )  
    )  
v.    ) 1:97cr225 (CMH)  
    )  
COLIN ROSE                                    )

**RESPONSE OF THE UNITED STATES  
TO MOTION FOR MODIFICATION OF SENTENCE**

The United States of America, by and through undersigned counsel, hereby responds in opposition to the motion of the defendant for a modification of sentence. The defendant apparently believes he is entitled to some relief as a result of the retroactive application of the amended crack cocaine guidelines pursuant to Title 18, United States Code Section 3582(c)(2) and U.S.S.G. § 1B1.10. The defendant is not entitled to any relief, however, as the defendant's guideline range of life in prison was the result of his conviction for both murder and drug trafficking (a sentence that was subsequently reduced to twenty years as a result of his cooperation), and that guideline range remains at life under the amended guidelines.

**CASE HISTORY:**

BOP No.	19442-083
Offenses of Conviction	Count 1 – Conspiracy to Distribute Marijuana, Cocaine and Crack Cocaine, 21 U.S.C. § 846 Count 2 – Use of interstate facilities to commit crimes of violence (robbery resulting in death) 18 U.S.C. § 1952
Original Sentencing Date	12-12-1997
Original Guideline Findings of the Court for Crack Offenses	
Drug Quantity	More than 1.5 kilograms of crack; converted to 30,053 kilograms of marijuana
Offense Level	38
Gun Adjustment	+2
Role in Offense Adjustment	+4
Adjusted Offense Level – Drugs	44
Original Guideline Findings of the Court for Robbery Resulting in Death	
Offense Level	43
Victim Adjustment	+2
Role in Offense Adjustment	+2
Adjusted Offense Level – Robbery	47
Combined Guidelines	
Drug Offense Level	44

Robbery Resulting in Death Offense Level	47
Increase for Multiple Counts	+2
Combined Offense Level Total	49
Acceptance of Responsibility	-3
Offense Level Total	46
Criminal History	IV
Guideline Range	Life
Original Sentence of Imprisonment	Life
Rule 35 Reduction – Resulting Sentence	20 years
Pending Matters (Appeal or 28 U.S.C. § 2255)	No

## REVISED GUIDELINES

Offenses of Conviction	Count 1 – Conspiracy to Distribute Marijuana, Cocaine and Crack Cocaine, 21 U.S.C. § 846
Original Guideline Findings of the Court for Crack Offenses	Count 2 – Use of interstate facilities to commit crimes of violence (robbery resulting in death) 18 U.S.C. § 1952
Drug Quantity	More than 1.5 kilograms of crack; converted to 30,053 kilograms of marijuana
Offense Level (U.S.S.G. § 2D1.1, Application Note 10(D)(I))	36
Gun Adjustment	+2
Role in Offense Adjustment	+4

Adjusted Offense Level – Drugs	42
Original Guideline Findings of the Court for Robbery Resulting in Death	
Offense Level	43
Victim Adjustment	+2
Role in Offense Adjustment	+2
Adjusted Offense Level – Robbery	47
Combined Guidelines	
Drug Offense Level	42
Robbery Resulting in Death Offense Level	47
Increase for Multiple Counts	+2
Combined Offense Level Total	49
Acceptance of Responsibility	-3
Offense Level Total	46
Criminal History	IV
Guideline Range	Life

Thus, the defendant's Offense Level Total does not change because of the amended crack guidelines, and his original guideline sentence of life also does not change. The defendant is, therefore, not entitled to any relief under Title 18, United States Code Section 3582(c)(2) and U.S.S.G. § 1B1.10. Furthermore, given that the defendant's guideline sentence of life is not affected by the amended crack guidelines, the defendant's reduction of sentence from life to twenty years should also remain unaffected.

## **CONCLUSION**

For the foregoing reasons, the United States respectfully requests that the defendant's motion be denied.

Respectfully submitted,

Dana J. Boente  
Acting United States Attorney

By: \_\_\_\_\_ /s/

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## CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2009, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to counsel of record for the defendant. In addition, on February 26, 2009, a copy of the foregoing pleading was sent by mail to Colin Rose, No. 19442-083, 2240 Hubbard Road, Youngstown, Ohio 44505.

By: \_\_\_\_\_ /s/  
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